

In re: Barturen et al.
Serial No. 09/943,563
Filed: August 30, 2001
Page 5 of 9

REMARKS

Applicants appreciate the thorough review of the present application as evidenced in the Office Actions dated December 14, 2004, June 16, 2005, January 30, 2006 and May 23, 2006. As discussed below, Applicants have amended independent Claims 1, 5 and 6, and have cancelled Claims 7-11. The amendments to Claims 5 and 6 are non-substantive in nature (they merely change a designator to improve the readability of the claims. The amendment to Claim 1 adds a recitation similar to the recitation of Claim 7. The claim amendments made herein do not require any additional search by the examiner, and place the application in condition for allowance and/or in better form for appeal. Moreover, as discussed in detail in the following section, the May 23, 2006 Office Action was prematurely designated as a Final Office Action, as the Office Action changed the cited grounds for rejection, yet such changes were not necessitated and/or responsive to any claim amendments by Applicants. Accordingly, the present Amendment should be entered for at least these reasons.

For the reasons discussed herein, Applicants respectfully submit that the cited art does not disclose or suggest the subject matter of pending Claims 1-6 or 12-17, and hence Applicants respectfully request reconsideration and withdrawal of the pending rejections for at least the reasons set forth below.

I. Request for Withdrawal of the Final Rejection

The May 23, 2006 Office Action is designated a Final Office Action. Pursuant to MPEP § 706.07(a), a "second or any subsequent action on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c)." Here, the May 23, 2006 Office Action sets forth new grounds of rejections in that the rejections have clearly been changed when compared to the text of the rejections in the January 30, 2006 Office Action. By way of example, the current rejection of Claim 1 cites to client server 216 of Fig. 2A, Col. 2, lines 53-56, Col. 3, lines 20-32, Col. 4, lines 15-67, Col. 8, lines 47-57 and FIG. 1 and associated text of Goiffon as disclosing delivery of software products "to target software product execution units." (Office Action at 5). In contrast, the rejection of Claim 1 in the January 30, 2006 Office Action

In re: Barturen et al.
Serial No. 09/943,563
Filed: August 30, 2001
Page 6 of 9

cited only to client server 216 of Fig. 2A of Goiffon as disclosing this recitation of Claim 1. As explained in detail in Applicants' previous response, client server 216 of Goiffon does not disclose "delivery of software products to target software product execution units" as recited in Claim 1. In response to Applicants' arguments, the May 23, 2006 Office Action has changed the pending rejections to cite to other portions of Goiffon (i.e., Col. 2, lines 53-56, Col. 3, lines 20-32, Col. 4, lines 15-67, Col. 8, lines 47-57 and FIG. 1) to reject Claim 1, and argues at pages 2-4 that these newly cited portions of Goiffon disclose "delivery of software products to target software product execution units" as recited in Claim 1.

Here, the new grounds for rejecting Claim 1 set forth in the May 23, 2006 Office Action were not necessitated by any amendments to the claims made by Applicants, nor were they in response to Applicants' filing of a supplemental information disclosure statement. As such, the designation of the rejections as "Final" was premature under MPEP § 706.07(a). Accordingly, Applicants respectfully request withdrawal of the Final Rejection as premature pursuant to MPEP 706.07(d) for at least these reasons.

II. The Rejections of Claims 1-6

As noted above, Claim 1 has been amended to include a recitation similar to the recitation of Claim 7. Both Claims 1 and 7 stand rejected as anticipated under 35 U.S.C. § 102 by U.S. Patent No. 6,427,230 to Goiffon et al. ("Goiffon"). For the reasons discussed below, Applicants respectfully request reconsideration of the rejection of Claim 1, because Applicants submit that Goiffon does not disclose or suggest at least the recitation added to Claim 1 from Claim 7.

In particular, the last clause of Claim 1 recites "a fourth sub-system for recording information provided by at least one of the first through third sub-systems of the integrated data processing system during delivery of the software product."¹ The Office Action cites to line 227 of Fig. 2A and line 240 of Fig. 2B of Goiffon, and associated text, as disclosing such a subsystem. (See Office Action at 8). Line 227 of Fig. 2A of Goiffon is a "File I/O" line that connects Client Server 216 to elements of AIM Server 214. Line 227 is not discussed anywhere

¹ This subsystem was called the "sixth" subsystem in Claim 7, but was relabeled the "fourth" subsystem to improve the readability of Claim 1. This change necessitated corresponding amendments to Claims 5 and 6.

In re: Barturen et al.
Serial No. 09/943,563
Filed: August 30, 2001
Page 7 of 9

in the specification of Goiffon (as indicated by a text search of Goiffon on the term "227"). Applicants respectfully submit that line 227 of Fig. 2A of Goiffon clearly does not disclose or suggest "recording information . . . during delivery of the software product" as recited in Claim 1. Instead, there is no indication whatsoever that line 227 of Goiffon "records" anything, let alone does so "during the delivery of a software product." Likewise, line 240 of Fig. 2B of Goiffon shows a connection between the "Import/Export Files" and the "File I/O line 227." Neither line 240 nor the description thereof have anything to do with providing "a fourth sub-system for recording information provided by at least one of the first through third sub-systems of the integrated data processing system during delivery of the software product" as recited in Claim 1. Accordingly, Applicants respectfully submit that Claim 1 is patentable over Goiffon for at least this reason.

Dependent Claims 2 and 4-6 stand rejected as anticipated under 35 U.S.C. § 102 by Goiffon. Dependent Claim 3 stands rejected as obvious under 35 U.S.C. § 103(a) based on Goiffon in view of U.S. Patent No. 5,974,454 to Apfel. Applicants respectfully submit that these claims are patentable over the cited art for at least the reasons that Claim 1 is patentable, and hence respectfully request withdrawal of the rejections of Claims 2-6 as well.

III. The Rejections of Claims 12-17 Should be Withdrawn

Independent Claim 12 is directed to another method of developing and installing a software product on a plurality of target computers. The Office Action rejects Claim 12 as anticipated by Goiffon. Applicants respectfully traverse this rejection.

In particular, Applicants submit that Goiffon does not disclose or suggest "storing the built software product in the central repository." The Office Action cites to the rejection of Claim 2 in an earlier part of the Office Action as identifying the portions of Goiffon that teach this recitation of Claim 12. However, Claim 2 recites a "software package distribution repository for storing the at least one software product package created by the second sub-system." **The "software package distribution repository" of Claim 2, hence is something different than the "central repository", which is a separate element of Claim 2** (as the central repository is cited in Claim 1 from which Claim 2 depends). As such, by definition the cited elements of Goiffon cannot teach "storing the built software product in the **central repository**" as recited in

In re: Barturen et al.
Serial No. 09/943,563
Filed: August 30, 2001
Page 8 of 9

Claim 12, as the Office Action has taken the position with respect to Claim 2 that those elements are something different than the central repository (namely, a separate "software package distribution repository"). Accordingly, the rejections of Claims 2 and 12 are not reconcilable, and Applicants respectfully submit that the rejection of Claim 12 should be withdrawn for at least this reason.

Claim 12 further recites "storing the installable software product in a second repository."
As with the January 30, 2006 Office Action, the May 23, 2006 Office Action once again does not even attempt to identify where this recitation of Claim 12 is disclosed in Goiffon.

Moreover, Applicants submit that nowhere does Goiffon disclose or suggest storing an installable software product in a second repository. In any event, Applicants respectfully submit that to make a *prima facie* rejection of Claim 12 under 35 U.S.C. § 103, the Examiner must identify where each and every one of the recitations of Claim 12 are found in the cited prior art references. This simply has not been done with respect to the "storing the installable software product in a second repository" recitation of Claim 12, and hence the rejection of Claim 12 should also be withdrawn for at least this additional reason.


Dependent Claims 13-15 and 17 also stand rejected in the Office Action as anticipated under 35 U.S.C. § 102 by Goiffon. Dependent Claim 16 stands rejected as obvious under 35 U.S.C. § 103(a) based on Goiffon in view of U.S. Patent No. 6,110,228 to Albright. The rejections of Claims 13-17 should be withdrawn for at least the reasons that the rejections of Claim 12 should be withdrawn.

In re: Barturen et al.
Serial No. 09/943,563
Filed: August 30, 2001
Page 9 of 9

IV. Conclusion

For the reasons discussed above, Applicants respectfully request that the Examiner reconsider and withdraw the pending rejections, and pass the present application to allowance.

Sincerely,

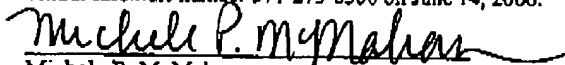


D. Randal Ayers
Registration No. 40,493

Customer No. 46590
Myers Bigel Sibley & Sajovec
P. O. Box 37428
Raleigh, North Carolina 27627
Telephone: (919) 854-1400
Facsimile: (919) 854-1401

CERTIFICATION OF FACSIMILE TRANSMISSION
UNDER 37 CFR 1.8

I hereby certify that this correspondence is being facsimile transmitted to the Patent and Trademark Office via the central facsimile number 571-273-8300 on June 14, 2006.


Michele P. McMahan